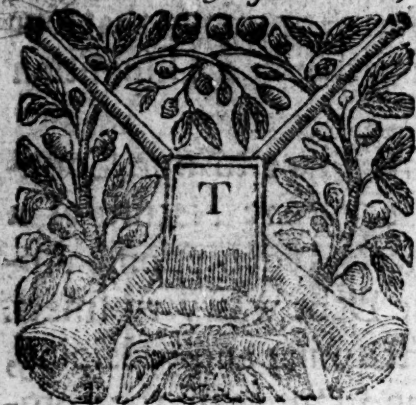


Unto the Right Honourable, The Lords of Council and Session,
The PETITION of Elisabeth Ramsay Reverfer
of Wyliecleugh,

Humbly sheweth,



HAT, in the Declarator of Redemption of the Estate of Wyliecleugh at my Instance against Brownlie, your Lordships, upon the 3d instant, pronounced the following Interlocutor; On Report of the Lord Strichen, and the within Debate, the Lords found, That the Apprising and whole Sums therein-contained, without Distinction betwixt principal Sum and Annualrents, accumulate Sum and Annualrents thereof, or Accessories thereto, do belong to the Heir; and no Part thereof to the Executor, notwithstanding the Apprifer died within the Legal.

I must lay this Case again before your Lordships, and indeed it seems worthy of the utmost Attention. In order to resolve this Question, the precise Nature of our Adjudications and Apprisings must be divid'd into and ascertained: And indeed, which ever Way the Question be determined, it must draw after it a long Train of Consequences, proper to be under Consideration at advising this important Point.

And, after all the Pleadings and various Topicks insisted in on either Side, the whole was found at advising to turn upon this Hinge, Whether an Apprising is to be considered as a proper legal Sale with a Faculty of Redemption, or a legal Disposition for Security and Payment of Debt: Fixing once this preliminary Question, the Point in Issue will follow of Course. If an Apprising be of the Nature of a proper Sale, with a Power or Faculty to redeem the Lands in a limited Time, then this will follow, That the apprised Lands go to the Creditor, not in SECURITY, but in SATISFACTION of his Debt, which accordingly is considered to be the Price; after which the Apprifer has no longer a Claim against his *quondam* Debtor, but, in Place thereof, becomes Proprietor of the Lands just as much as in a voluntary Purchase: And, in this Situation, while the Apprifer continues Proprietor of the Lands, as he has no Claim whatever against the Reverfer, there can be no *termini habiles* for the present Question; for, if no principal Sum be due, there can be no Bygones or Annualrents to fall to the Apprifer's Executor: The Right to the Lands is the only Thing that subsists in the Apprifer's Person, the bygone Rents of which will fall to his Executor at his Decease; but the Land itself must descend to his Heir, and it is he only who must be entitled to draw whatever Sum is found to be due by the Reverfer upon Redemption, as a Surrogatum in Place of the Lands: These Consequences your Petitioner must yield are clear and undeniable.

On the other Hand, it appears equally clear and undeniable, That, if an Apprising be considered as no other than a legal Disposition to a Creditor for Security and Payment of his Debt, commonly called a *pignus pratorium* or *judiciale*, which does not sink or sopite the Debt, but, on the contrary, fortifies and corroborates it; then it must follow, that the bygone Annualrents due upon the Debt thus really secured, must go to Executors equally with the bygone Annualrents of an Infeftment of Annualrent: And, upon this Supposition, this must be the Consequence so long as there is a subsisting Debt in the Apprifer's Person, which is while the Legal is current. It comes out to be a very different Matter upon Expiry of the Legal; after which, what was a Right in Security turns to be a Right of Property in Satisfaction of the Debt hitherto subsisting, which of Course is a Discharge and Extinction of the Debt *in totum*, accumulate Sum, bygone Annualrents, &c. after which it can neither descend to Heir or Executor.

Towards the Discussion then of this Point, Whether an Apprising be a redeemable Sale or a *pignus pratorium*, I beg Leave to consider the Progress of our Law, and the Alterations that have been made partly by Time, partly by Statute, in the Nature of our Securities. Originally our Securities of all Kinds, legal and conventional, were of the Nature of a Sale under Redemption, or, which approaches to the same, a proper Wadset: Even an Infeftment of Annualrent was a proper Wadset, it was a Sale of a yearly Annuity to be uplifted out of Lands; and, during the Subsistence of that Right, the Creditor had nothing for his Money but to draw his Annualrents yearly out of the Ground: He had no personal Action for Payment until he was pleased to quit his real Security; and then, upon proper Premonition, his Claim for Repetition of the Money begun to exist, just as if he had lent the same upon personal Security. But Process of Time and frequent Trials discovered many Inconveniences in this Form of Security, both with respect to the Debtor and

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and Creditor: With regard to the Creditor, it was difficult for him to raise his Money once lent out upon heritable Security; With regard to the Debtor, it seldom happened that he had a Farm or detach'd Piece of Ground precisely commensurate to the Sum he wanted to borrow. For these and many other Reasons, proper Wadsets and the old Form of Investments of Annualrent went by Degrees out of Repute; and, in our later Practice, all our Securities have been and are conceived in the Shape of a Disposition granted to the Creditor for Security and Payment of his Debt. And, upon the same Plan, I hope to satisfy your Lordships, whatever was the original Conception of an Apprising, that our later Practice and Decisions go upon the Supposition of an Apprising being a Disposition for Security and Payment, and not a Sale under Reversion.

In this View the Act 6th, P. 1621, does present itself in the first Place to our Consideration. Before that Period, there is no doubt an Apprising was of the Nature of a proper Sale under Redemption; and thereby it happened, that, before Redemption, Apprisers were allowed to possess great Subjects unaccountably where the Debt was very small. To remedy this Inequality, the Act 6th, P. 1621, was introduced, statuting and ordaining, "That the Compriser shall have no further Right to the Mails and Duties of the comprised Lands during the Legal, but only to such Part and Quantity thereof as will correspond to the Annualrent of the Sum for which Comprising is led: With this Provision always and express Declaration, That, if the Mails and Duties exceed the Annualrent of the Sum for which Comprising is deduced, and that the Compriser please to intromit therewith; in that Case, his further Intromission shall be ascribed in PAYMENT and SATISFACTION of his principal Sums *pro tanto*." In this Clause the following Things are to be observed; *1mo*, That the Mails and Duties of the appraised Lands are declared to belong to the Apprifer, in so far only as will satisfy the Annualrents of his accumulate Sum; the Superplus are to remain with the Debtor Proprietor of the Lands, which he may freely intromit with. All that is given to the Creditor, with regard to these superplus Rents, is no more but a FACULTY or POWER of intromitting, if he pleases, in order to extinguish his principal Sum; but this gives no preferable Right, nor will be any Foundation of Repetition against any secondary Creditor, no not against the Debtor himself: And this I shall show to be our constant Practice, founded upon this very Act of Parliament. *2do*, Here is in most direct Terms Mention made of a principal Sum bearing Interest subsisting in the Apprifer's Person, not only after leading the Diligence, but even after entering into Possession; and the Apprifer's Intromission's declared to be imputable in Payment and Satisfaction of this Sum *pro tanto*. *3tio*, The Act declares, That Intromission to the Extent of the accumulate Sum and Annualrents shall make the Apprising expire *ipso facto*, and cease in all Time coming. Now, it is inconsistent with the Nature of the Thing, that Rights of Property can cease or be extinguished: If the Reverser be denuded *funditus* of his Property, which he must be by a Charter and Safine upon the Adjudication holding of the Superior, if an Apprising be a Disposition of the Property, he cannot otherwise be reinvested than by a new Conveyance from the Apprifer: And yet we have no such Practice; for it is *triti juris*, that not only Intromission, but a Discharge or Renunciation will spite an Apprising; than which there cannot be a stronger Proof, that an Apprising is no more but a Right in Security, perfectly consistent with the Right of Property remaining in the Debtor's Person, and which therefore like any other Burden affecting Lands may be discharged or renounced without Necessity of a Conveyance. And this Argument will be strengthened, by considering the Case of a proper Wadset holding of the Superior, which, by the Principles of Law, cannot possibly be spite by a Discharge or Renunciation, but, upon Redemption, must be conveyed as a Right of Property.

It is, with great Deference, difficult for your Petitioner to comprehend how these Positions one or other of them can be reconciled to the Supposition, that an Apprising is a Sale under Redemption, and that the Apprifer is Proprietor of the Lands, but by no Means a Creditor. If he be Proprietor, how can the Rents belong to the Reverser? which they infallibly do, if the Apprifer do not make it his Choice to intromit with them: And, if he has no Claim, no *jus crediti* subsisting in his Person, how can his Intromissions be ascribed in Payment and Satisfaction of a *Non-ens*, of a Debt that is not existing? And how is it possible that an Apprising can be a Right of Property, when it is extinguishable by Intromission? It will be agreed upon on both Sides, that, in our Acts and Statutes, 'tis no Part of the Design to settle the abstract Nature of Things: This is left to be gathered and fixed from the Points established as Law in these Acts and Statutes. And, in the present Case, the Points established to be Law seem to be of that Nature, as necessarily to infer an Alteration of the Constitution of an Apprising from a Sale under Redemption to a Disposition in Security for Payment of a Sum.

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And what fortifies this, and goes Hand in Hand with the Act of Parliament, are the following Considerations; That, in a proper Sale under Redemption, the Purchaser is Proprietor, the Rents belong to him uplifted or not uplifted; if they perish in the Tenants Hands, they perish to him as *dominus*, without regard whether he has done Diligence or not. If the Reverser or any other Mortal intromit with these Rents, a proper Action of Mails and Duties does ly, as much as if the Property were his irredeemably. All these Consequences flow from the very Nature of the Thing: Such was the Case of an Appriser before the Act 1621, and such behoved to be his Case at present, upon Supposition an Apprising continued to be of the Nature of a proper Sale. But the direct contrary Practice is established with regard to every single Article: If the Debtor uplift the Rents, no Action lies against him for Mails and Duties, or otherwise, for Repetition of the same. This was found in a pretty remarkable Case, *Stair*, 29th July 1675, Earl of *Pannuir* contra *Colison*; "Where a Debtor, after his Lands were appraised, having uplifted his Farms from his Tenants, sold the same, and assigned the Bond for the Price: "In a Competition anent the Sum in the Bond betwixt the Assigny and the Appriser, "who alledged that the same ought to be made forthcoming to him, as the Price of the "Vidual-rent which belonged to him the Appriser; the Lords preferred the Assigny, in "regard the Rent was discharged by the Master, who was entitled to intromit if the "Appriser chose to forbear." And the like has often been found upon the same Principles with regard to a secondary Creditor's Intromission, who was never found liable to repeat to the preferable Appriser the Rents he was allowed to intromit with. And, to enforce this, it has been decided, That an Appriser after the Legal is expired, intromitting with Rents that fell due during the Legal, the same will be imputable towards Extinction of his accumulate Sum, in order to cut down the Apprising; *Durie*, 16th January 1634, Tutor of *Balmaghie* contra *Maxwell*. Which must go upon this Supposition or none, That these Rents belonged to the Debtor: For the Debt in the Apprising being in Part subsisting upon the Lapse of the seven Years, there could be no Room thereafter for Redemption; and the Appriser's posterior Intromission could not be applied to extinguish what remained of the accumulate Sum, upon any other Supposition than that these Rents, having fallen due during the Currency of the Legal, belonged to the Debtor. Now these, as they check in with the Act of Parliament, so they seem, for what your Petitioner can understand, inconsistent with the Supposition that the Appriser is Proprietor, and of consequence has the absolute exclusive Title to these Rents. And the whole Doctrine; with regard to Diligence prestable by Apprisers, is equally incongruous to the Supposition of their being Proprietors: Upon which it is little necessary to enlarge, as being of itself pretty apparent.

Your Lordships, in the next Place, will take a View of that Clause of the Act 62, Parl. 1661, which entitles Debtors upon Security to restrict Apprisers to the Annualrent of their accumulate Sum. In every Article of this Clause an Apprising is pointed out to be a *pignus pratorium*. The accumulate Sum is spoke of as a subsisting Debt bearing Annualrent; and, upon Caution found by the Debtor to pay these Annualrents, he has it in his Power to turn his Creditor altogether out of Possession: Was there ever such a Thing done? or is it at all consistent to be done upon the Supposition an Apprising is a Sale under Redemption? No such Thing is attempted to be done in the Case of a proper Wadset, and yet there is the same Reason if both be of the same Nature. But now, suppose such Caution is found, Can it be doubted the bygone Annualrents in such a Case will belong to the Executor of the Appriser, as the bygone Rents of the Land to the Debtor's Executor? It can scarce be thought but the same will obtain, where, instead of Caution, an Allocation of Rents is made to the Appriser for Payment of his Annualrents. And this leads to the general Point, where an Apprising is left upon the Footing of the Act 1621, that the same do also obtain in that Case: For it cannot well be supposed, that an Act, intended for the Ease of Debtors only, should have such a signal Operation in Law, as to alter the Interests of the Heir and Executor, and to restrict an Apprising to be a Security for Annualrents only, if it had not been understood to be of the Nature of a Security, and not a Right of Property, before making the Act.

So far upon the Act 1621, and the other Topicks that tend to illustrate and explain it. Your Petitioner shall go on to open separate Arguments that tend to fix the Point in Controversy, and to make out that an Apprising is no more but a *pignus pratorium*. And therefore, in the next Place, your Lordships will have in your Eye your own daily Practice of opening the Legal of Apprisings upon Informalities, and restricting them to be Rights in Security commonly for the principal Sum and bygone Annualrents. After an Apprising is brought into this Situation, that the Legal can never expire, it must follow, if the Creditor die at any Time, the bygone Annualrents will belong to his Executor, as much

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much as the Bygones of an Infestment of Annualrent. This Practice demonstrates that Apprisings have been considered as no other than Rights in Security: For it is not conceivable any Informality in leading the Diligence can have such an Effect as totally to change the Nature of it. If the Objection be such as *funditus* to cut it down, there is an End of it: If not, the Objection may have such an Effect as to deprive it of one or more of its Privileges; but, so far as it subsists at all, it must subsist as an Apprising, that is, as a legal Sale under Reversion. In a Word, when an Apprising is first led, upon the present Supposition, 'tis either a legal Sale, or nothing at all. And tho' such Objections may ly against it as to bar for ever the Expiry of the Legal, or even to bar Accumulations; yet in the same Shape it begun to exist, must it continue: And after Elapse of the ten Years, when the Creditor is seeking the Benefit of an expired Legal, tho' the Lords may interpose and declare that the Legal cannot expire, and that there can be no Claim for Accumulations; yet, with Submission, they cannot do an inconsistent Thing, which is to declare it to be a Right in Security, when it was and is truly a Right of Property redeemable. And therefore, as the Decisions are exceeding numerous, in which your Lordships have restricted Apprisings and Adjudications, because of one or other Informality, and found them Rights in Security only; your Petitioner begs Leave to found upon these Decisions as so many Authorities, That an Apprising in its original Constitution is properly speaking a Security only, and not a Right of Property.

3thio, It will go very far to clear this Point, if we can settle whether the Apprifer or his Debtor during the Legal is consider'd as the Vassal. If the Casualties of Superiority fall by the Apprifer, it is a strong Proof that an Apprising is a Right of Property; as on the other Hand, if the Casualties fall by the Debtor, it will be an Evidence that he remains Proprietor, and that the Apprifer is consider'd in no other Shape than as a Creditor having the Lands pledged to him for Security and Payment of his Debt. It must be acknowledged *in limine*, that our Practice has waver'd as to this Point, and some of our Authors have talked doubtfully about it. *Dirleton*, Voce *Comprisings*, states it as a Doubt, in the following Words; "If a Compriser of Ward-lands die before Expiry of the Legal, will the Marriage of the Heir fall? If it fall, will the Debtor, if he redeem, be liable to refund the Avail?" Sir *James Stewart* answers, "That the Marriage of an Apprifer's or Adjudger's Heir should not fall until the Adjudication expire: For, if the Adjudication come to be satisfied within the Legal, then the Adjudger draws only his Debt, and the Casualties of the Ward vake by the Debtor; for it were a great Hardship that a Creditor adjudging Ward-lands for his Debt, and thereupon obliged to secure himself by Infestment, should by his Decease have his Marriage to vake, which may be of greater Avail than all his Debt: Nor can it be thought reasonable that the Debtor redeeming should make good to him his Damage. But the plain Ground of Law appears to be, That a Creditor is allowed to adjudge as well Ward-lands as others, only for Payment of his Debt; and that, if the Debt be paid before the Legal, he should be dismissed: And therefore it was of old the Practice of Exchequer, to take an Apprifer entring, bound to renew his Infestment after expiring of the Legal, as judging that then only he became the King's Vassal, and liable to the Casualties of the Holding." Lord *Stair*, p. 255. distinguishes whether the Apprifer be in Possession yea or not, and holds, that, if he be not in Possession, the Ward falls not by his Death, "Because his Apprising is but a legal Diligence, which he may renounce or relinquish, and insist by other Diligence for Payment." And it was found, 28th July 1680, *Yeaman contra Dryburgh*, That Marriage fell by the Death of the Apprifer of Ward-lands. However, this Practique seems not to be extremely direct; for, as *Fountainball* observes the Decision, the Lords allowed the Ground of the apprised Lands to be poinded only in so far as the Sums in the Apprising would extend to, and no further, because it was not expired. Which seems to be a sort of tryfing Interlocutor: For this will not be found to be the Case with regard to a proper Sale under Reversion; for redeemable or not redeemable cannot affect the Superior's Interest. But, let that be as it will, what was in some measure doubtful in these Days, is clearly fixed by later Practice; and now it is *triti juris*, that during the Legal the Debtor is held as Proprietor, and all Casualties of Superiority fall by him. It shall suffice to mention one Case fully pled and solemnly fixed, 15th July 1707, Creditors of *Edinglassie contra Gordon*, observed both by *Fountainball* and *Forbes*, "Where Recognition during the Legal was found incurr'd by the Reverfer's Deeds within the Legal, and that it could not fall by any Deed of the Apprifer, who had only a real Pledge for Security of his Money, which did not denude the Debtor until the Legal was outrun." And, if your Lordships continue to be
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of the same Opinion, there seems to be an End of the Dispute; for if the Property of the Lands remains with the Debtor, so as he continue to be Vassal during the Legal, an Apprising can be no other than a legal Security for Debt, by no means a Right of Property, which cannot subsist in two Persons at once.

4^{to}, It is extremely material what was pled in the Decision just now mentioned, and which was the *ratio decidendi*, That the Reverter during the Legal may possess, remove Tenants, receive Vassals, take Compositions, and confirm Charters; all of which are undoubted Acts of Property, and cannot be exercised more or less by any Man who has sold his Lands, and reserved to himself no more but a Power or Faculty to redeem within a limited Time.

5^{to}, It will coincide with and fortify the two Arguments just now mentioned, if we take a View of the Law with regard to an Appriser's Possession during the Legal. In our old Practice an Appriser was obliged to take Infestment before he could enter into Possession; and the Reason was, an Apprising was considered as a Disposition of the Property; the Superior behoved to have a Vassal, and he had an Interest to insist for his Year's Rent for change of the Vassal; and the Law allow'd him to make this Interest effectual, by barring the Appriser from possessing until he was infest. And of this Doctrine we have Traces as far down as the Restoration. See 22 July 1665, *Johnston contra Tenants of Auchincrofs*. But soon thereafter, as our Notions that an Apprising was a Disposition of the Property were then wearing out, our Judges went into a different Method: It was thought hard upon the Debtor to oblige the Appriser during the Legal to pay a Year's Rent to the Superior, which he behoved to do if the was infest; and therefore they came to a Resolution to allow the Appriser to possess during the Legal without infesting himself, 3d December 1672, *Hay contra Laird of Earlstoun*; and this has been our constant Practice ever since. And it must be extremely plain, that what at the Bottom influenced this Practice was the Consideration that an Apprising during the Legal is no more but a *pignus pratorium*, a temporary Security for Debt; in so far that an Appriser now-a-days is never reckon'd *in mora* for delaying to take Infestment during the Legal, nay, is reckon'd hard and rigorous if he does insist for it.

6^{to}, We have the express Authority of a Statute for maintaining that an Apprising during the Legal is not a Right of Property, but a Security only for Debt. It is Act 21. P. 1681, *Concerning the Election of Commissioners for Shires*, where it is declared, *That Apprisers or Adjudgers shall have no Vote in the saids Elections during the legal Reversion and that after expiring thereof the Appriser or Adjudger first infest shall only have Vote*. And the Difference is remarkable that is put betwixt Apprisers during the Legal and proper Wadsetters, which last are entitled to a Vote; and what the Legislature has had in View is most apparently, that a Wadset is a Right of Property with a Faculty of Redemption, but that an Apprising is no such Thing, that it is no other than a Disposition for Security and Payment, perfectly consistent with the Debtor's Right of Property.

And now, having laid before your Lordships what occurs to the Pursuer, tending to make out that an Apprising or Adjudication is consider'd in our Law and Practice to be nothing different from a Disposition in Security and Payment, and not at all in Satisfaction of the Debt, she apprehends, if this preliminary Point be once fix'd, it must follow of necessary Consequence, that the Bygones of the Debt secur'd must, like all other Bygones, go to Executors. And, if this Reasoning be agreeable to the Principles and Analogy of Law, she need be very little apprehensive anent the Difficulties that have or can be moved anent the Prosecution and following forth of such a Right supposed to be in the Executor's Person: For if it be once fixt, That an Adjudication is a Right in Security, which involves two relative Ideas, a Debt which is secured, and a Subject which is granted in Security; and if the Executor be entitled to the bygone Annualrents arising due in every Species of a Right in Security; it belongs to your Lordships, as the Sovereign Court, to establish Methods for prosecuting the same to its full Accomplishment, as you are in use to do in similar Cases where the common Law is deficient; witness Adjudications *contra hereditatem jacentem*, introduced by the sole Authority of the Court of Session. And therefore, in this Application, she shall touch these Difficulties but cursorily. And, 1^{mo}, As to the Difficulty and Absurdity, as it was pled, that an Executor should have Right to Lands; it is allow'd to be extremely incongruous to the Analogy of Law that an Executor should have any direct Claim to Lands as a *principal* Right, because the Law gives such a Claim to the Heir only. But there is no Sort of Absurdity, as the Executor has Right to Bygones, that he should have the Right with all its Accessories, to be followed forth thro' all its Consequences

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until its utmost Completion. Upon this very Footing an Executor, by his sole Confirmation, has established in him a real Right in Lands; and 'tis quite as natural he should have a real Right to Lands, providing it be a Consequence of his Right to Bygones. And, 2do, With regard to the Form of making up Titles, that is under your Lordships Direction, whether it should be done by a declaratory Action, or in what other Manner; tho' this is not the Question in Hand. At the same Time, if it will tend to avoid the Difficulty, the Pursuer may yield that the Legal should expire in favours of the Heir only, who thereby will have the sole Right to the Lands, leaving the Bygones as a real Burden upon the Lands, to be followed out at the Executor's Instance by an Action of Poinding the Ground.

Further, to satisfy your Lordships that these are no real or unfurmountable Difficulties, I shall put a Case where the same Difficulties do necessarily cast up, and which at the same Time will be allowed as Arguments of no Weight against the Executor. Suppose a Disposition granted to a Creditor in Corroboration of his Debt, and in Security and Payment thereof, with this express Condition, if the Debt be not paid within a limited Time, That the Right of Redemption shall expire, and the Lands belong irredeemably to the Creditor; This is precisely an Adjudication, as your Petitioner conceives it to be: And yet, in this supposed Case, the Executor must have Right to the bygone Annualrents due upon the Sum, if the Creditor die while it continues in the Shape of a Right in Security; and of necessary Consequence the Executor must have a partial Interest in the Lands effecting to his Claim, if the Term be allowed to expire without Redemption; and this Right being supposed in him, your Lordships no doubt would direct some Method to be used for making up Titles to the Land in his Person. Your Petitioner formerly gave another Instance of an Executor's having Right to Lands in virtue of a Confirmation, and many others might be figured unnecessary to take up your Lordships Time with: So that indeed 'tis no Novelty in our Law, that an Executor, in virtue of his Claim to Bygones, should have Right not only to Burdens affecting Lands, but to the Property itself.

Upon the Whole, if your Lordships continue to be of Opinion, that the Executor of an Apprifer who dies during the Legal has no Right to any Part of the bygone Annualrents due upon the accumulate Sum, it must be that there are no bygone Annualrents due upon an Apprising, nor in Truth any subsisting Debt to carry Interest, but that an Apprising is a legal Disposition granted in *Satisfaction* and not in *Security* of the Debt, which indeed was your *ratio decidendi*. Now, if this be established, it is submitted if such a Doctrine must not be attended with this necessary Consequence of overturning a great Part of our Law that stands now absolutely fixed in the later Practice of the Court, grounded principally upon the Act 1621; and which later Practice, in all the various Instances given above, resolves itself plainly into this Proposition, That an Apprising or Adjudication is a legal Disposition granted in *Security*, not in *Satisfaction*. And therefore, if the Interlocutor be adhered to, it will be the same as finding an Apprising or Adjudication a Right of Property, strictly so speaking, subjected only to a Faculty or Power of Redemption within a limited Time; and then all these Consequences must follow, That the Rents belong absolutely to the Apprifer, as much as in a proper Sale; and that an Action of Mails and Duties must ly against the Reverser who intromits with the same, and against every third Party: It must follow, That all the Casualties of Superiority will fall by the Apprifer infest during the Legal, and that the Superior may bar him from possessing until he be infest: It must follow, That an Apprising cannot be extinguished by Intromission notwithstanding of the Act of Parliament, nor by Discharge or Renunciation, but must be conveyed like a proper Wadset holding of a Superior. And, lastly, It must follow, That the Apprifer, and not the Reverser, is entitled to vote at Elections; and that it belongs to him only to possess, remove Tenants, receive Vassals, take Compositions, and confirm Charters.

May it therefore please your Lordships to alter your Interlocutor; and to find, That an Apprising is no other than a legal Disposition in *Security* of the Debt due to the Creditor, which is not extinguished but corroborated by the Diligence: And therefore to find, That the bygone Annualrents due upon the accumulate Sum do belong to the Executor of the Apprifer dying during the Currency of the Legal; and to remit to the Lord Strichen Ordinary to proceed accordingly.

According to Justice, &c.

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